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Partners, Inc.
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN B. BIVONA; SADDLE RIVER
14 ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
15 MAZZOLA

16 Defendants.
17

Case No. 3:16-cv-1386

**RECEIVER'S MOTION FOR
THE APPROVAL OF FEES
AND EXPENSES FOR THE
PERIOD APRIL 1 TO JUNE
30, 2018, FOR THE
RECEIVER AND COUNSEL**

Date: October 23, 2018

Time: 1:30 PM

Courtroom: 5

Judge: Edward M. Chen
18

19 **PLEASE TAKE NOTICE** that on October 23, 2018, in
20 Courtroom 5 at 1:30 PM, the Receiver in the above captioned matter,
21 Sherwood Partners, Inc. ("Sherwood"), will move this Honorable Court for
22 the approval of the fees and expenses of Sherwood and its counsel,
23 Gartenberg, Gelfand & Hayton. This Motion consists of the Notice of
24 Motion, Motion and the accompanying declaration of Georgiana Nertea of
25 Sherwood, including Exhibits A, B and C appended thereto, which reflect
26 the time billings and expenses of the Receiver and the required SFAR
27 accounting report of the Receivership Estate; and the declaration of John
28

1 W. Cotton of Gartenberg, Gelfand & Hayton, including Exhibit A appended
2 thereto, which reflects its time and expenses.
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6 Dated: September 17, 2018

GARTENBERG GELFAND HAYTON
LLP

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8 By: /s/ John W. Cotton

9 John W. Cotton
10 Counsel to the Receiver
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MOTION FOR PAYMENT OF RECEIVER'S FEES

I. Background

On October 11, 2016, this Honorable Court issued an Order of Appointment of Receiver (the "Order") and thereby appointed Sherwood Partners, Inc. ("Sherwood") as Receiver in this matter. The Order also appointed John W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP as Counsel to the Receiver. Previously, the Receiver and its counsel submitted interim applications for fees and expenses for the time periods October 11, 2016, to March 31, 2017 (See: Docket Nos. 207 and 215, First Quarterly Fee Application filed on July 13, 2017, and approved on July 25, 2017 and August 11, 2017); April 1 to June 30, 2017 (See: Docket No. 275, Second Quarterly Fee Application filed on October 19, 2017 and approved, but with a 20% holdback for Sherwood on *both* the first (retroactive) and second fee applications, on November 16, 2017); July 1 to September 30, 2017 (See: Docket No. 303, Third Quarterly Fee Application, filed on December 26, 2017 and approved by the Court on January 25, 2018); October 1 to December 31, 2017 (See: Docket No. 315, Fourth Quarterly Fee Application, approved by the Court on March 13, 2018); and January 1 to March 31, 2018 (See: Docket No. 387, Fifth Quarterly Fee Application, approved by the Court on August 2, 2018, but with an additional hold-back of \$7,507.)

The total fees and expenses of the Receiver approved by the Court and paid to date total \$603,214.60¹ and the total fees and expenses of the Receiver's counsel approved by the Court and paid to date are \$189,238. The total fees and expenses of the Receiver being requested in this Sixth

¹ This amount is exclusive of the amount of \$203,925.53 paid to Sherwood for work performed during the period March to October, 2016, when it acted as Independent Monitor.

Quarterly Motion (the "Motion") are \$71,777.16² and the total fees and expenses of the Receiver's counsel requested in this Motion, are \$25,111.50.

Sherwood has, after considerable discussion with the staff of plaintiff SEC, reduced the amount of the original invoice for the current time period, by \$6,050. Declaration of Georgiana Nertea ("Nertea Decl.") at ¶ 3. The reason for this courtesy reduction is that during this billing period, Sherwood encountered the unanticipated departure of several lower cost staff assigned to this matter, and due to timeliness and necessity, had to complete their assigned tasks with more senior personnel. This resulted in a slightly higher billing charge than required for the tasks performed, and therefore Sherwood reduced 60.50 hours of more senior time, by \$100 per hour, bringing the effective hourly rate for this time to \$195 per hour typically charged for lower skilled staff. Nertea Decl., at ¶ 3.

In this Motion, Sherwood through Georgiana Nertea ("Nertea"), requests that this Court approve its Sixth Quarterly fees and expenses as well as that of its Counsel, for the time period April 1, 2018 to and including June 30, 2018. The Motion consists of the accompanying Declaration of Nertea, the time records of Sherwood (Exhibit A to the Declaration of Nertea), a narrative of the work performed by Sherwood (Exhibit B to the Declaration of Nertea) and the SEC's Standard Fund Accounting Report ("SFAR", Exhibit C to the Declaration of Nertea). The

² The amount of \$71,777.16 represents the work and expenses of Sherwood for the 2nd Quarter of 2018; Sherwood also seeks an additional amount of \$741.82 which was inadvertently left out of Docket No. 387, due to the oversight of the Receiver's counsel in drafting the Court's order approving the fees for the 1st Quarter of 2018, where this amount representing the Receiver's disbursements for that quarter was inadvertently left out. Declaration of Cotton at ¶ 7.

Receiver also requests approval for the fees of his counsel, John W. Cotton for the same time period. The Declaration of John W. Cotton with accompanying billing statements from his firm (Exhibit A to the Declaration of Cotton) also accompanies this Motion.

II. The Fee Application of Sherwood

As the Declaration of Nertea sets forth, the interim period for which it makes this Motion is April 1, 2018 to and including June 30, 2018. During this time period, the personnel who worked on this matter, and their discounted hourly rates include Mr. Andrew De Camara (\$510), and Georgiana Nertea (\$295). Sherwood's total charge for time and disbursements in this interim fee request is \$ 71,777.16. This represents a total of 257.80 hours, or 85.93 hours per month. Nertea Decl., at ¶ 3.

Sherwood has applied a 15% reduction to its standard rate. Nertea Decl., at ¶ 3. Nertea has personally reviewed all the time spent by Sherwood personnel on Receivership tasks and has attested to the accuracy and appropriateness of the time billed and has set forth the major work categories in which time was spent. Nertea Decl., at ¶¶4 and 5. Finally, Nertea has prepared the required SEC Standard Fund Accounting Report, or "SFAR", for the period covered by this Motion. Nertea Decl., at ¶ 5.

Nertea has broken down the total billed hours to the following organized task categories: Asset Management (53.20 hours); Investor and Creditor relations (76.10 hours); Investors' Group Communications (2.30 hours); Records Management (8.10 hours); Case Support and Administration (67.00 hours); SEC Support (9.40 hours); Claims and Litigation (7.10 hours); Solis Associates Fund, LLC (9.40 hours); and Tax Matters (25.20) Nertea Decl., at ¶ 4.

As set forth in footnote 2 above, the Receiver's counsel inadvertently omitted to include the amount of \$741.82 from the Court's prior order approving Sherwood's fees, which represented disbursements for the 1st Quarter of 2018. The approved invoice (Decl. of Hartheimer, Ex. A) set out the disbursement amount, but it was left out of the total put into Docket No. 387 due to the Receiver's counsel's omitting to add it into the proposed order which became Docket no. 387. Cotton Decl. at ¶ 7. The addition of this amount will make the total approved by the Court for the Receiver in this application \$72,518.98; however with \$35,888.58 being held until the conclusion of the Receivership, or as earlier ordered by the Court.

III. The Fee Application of Sherwood's Counsel

As the Declaration of John Cotton of Gartenberg, Gelfand & Hayton ("GG&H") sets forth, the period for which it makes its sixth interim fee application is April 1, 2018 to and including June 30, 2018. All time spent on Receivership legal matters were undertaken by Cotton alone, at a reduced billing rate of \$450 an hour. GG & H's total charge for time (\$24,885) and disbursements (\$226.50) in this Application is \$25,111.50. This represents a total of 55.8 hours, or 18.6 hours per month. Cotton Decl., at ¶ 3. GG & H has applied a 15% courtesy reduction to its standard rate and has only used personnel appropriate to the level of work being undertaken. Cotton Decl., at ¶ 3. Cotton has personally reviewed all the time spent on Receivership tasks and has attested to the accuracy and appropriateness of the time billed and has set forth the major work categories in which time was spent. Cotton Decl., at ¶ ¶4 to 6.

During the time period of this Motion, the work performed by Cotton consisted of the following work categories: responding to and advising the Receiver (23.2 hours); responding to and meeting with the

1 SEC concerning SRA IG investor group concerns and the Joint Plan of
2 Distribution (8.3 hours); review, preparation of and filing court
3 documents (10.5 hours); responding to and attending investor and
4 Defendants' counsel calls and related questions (4.2 hours); and handling
5 issues and communications regarding Estate investments: Mongo DB,
6 EAC, Practice Fusion, etc. (9.6 hours). Cotton Declaration at ¶ 4.

7 **IV. The SEC Has Reviewed the Accompanying Fee Invoices**

8 The Receiver and its counsel timely submitted their
9 accompanying fee applications to the Plaintiff SEC for its initial review as
10 required by the Court. The SEC and Receiver, as noted on Page 4, lines 4
11 to 15, thereafter held numerous discussions regarding the Receiver's
12 invoices, as a result of which the Receiver has substantially reduced its
13 fees for this time period. Nertea Declaration at ¶ 4. As a result, the SEC
14 has indicated that it has no objection to the fees now applied for in this
15 Motion, for either the Receiver, or its counsel. However, the SEC would
16 recommend to the Court that it set a 50% holdback on the Receiver's fees,
17 in the amount of \$35,888.58. The Receiver has agreed to this holdback
18 amount. At this time the SEC is not recommending any holdback for the
19 Receiver's counsel. (The amount of holdback is set forth in the
20 accompanying proposed order.)

21 **V. Conclusion**

22 For the forgoing reasons, the Receiver and his counsel request that
23 the Court approve the Motion for Sixth Quarterly Fees by signing the
24 attached Proposed Order.

1 Dated: September 17, 2018

GARTENBERG GELFAND HAYTON
LLP

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3 By: /s/ John W. Cotton

4 John W. Cotton
5 Counsel to the Receiver
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